Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

ABBAS A. RAWOOT,
Petitioner,

v.

CITIBANK (SOUTH DAKOTA) N.A.,
SIGNET BANK/VIRGINIA,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. When a consumer credit card company seeks to obtain an exception to discharge in bankruptcy of its advance of cash to debtor under 11 U.S.C. Section 523(a)(2)(A) and (C) on grounds that the advance was alleged to have been obtained through debtor fraud; and,

When business debtor puts forward credible evidence rebutting the issue of fraudulent intent, and the trial court finds from the evidence that debtor "sincerely hoped to repay" the cash advance funds at issue but nevertheless rules for creditor, reasoning that debtor failed to overcome the statutory presumption running in creditor's favor;

Whether the statutory presumption created by Sec. 523(a)(2)(C) was intended by Congress to impose upon debtors a greater evidentiary burden than that imposed by Sec. 523(a)(2)(A) in defending themselves against fraud nondischargeability claims, such that debtors must do something more than rebut the charge of fraudulent intent in order to defeat the presumption and prevail on the fraud claim.

II. When a business debtor has filed for Chapter 11 relief under the Bankruptcy Code, and in connection therewith, as a debtor in possession, has filed with the bankruptcy court all requisite monthly financial reports showing his income and expenses, which reports are made a part of the bankruptcy record; and,

When at a subsequent trial of an adversary proceeding in bankruptcy, the amount of debtor's income is not put in issue by plaintiff creditors and debtor's income, therefore, is not made part of the trial record;

Whether a bankruptcy court commits reversible error in finding due to there being no evidence in the trial record that the Chapter 11 debtor had no income.

III. In an adversary proceeding in bankruptcy brought by creditors seeking to except debt from discharge on the grounds of alleged debtor fraud, whether the bankruptcy court committed reversible error in disregarding evidence of petitioner's excellent credit history and in construing equivocal evidence on the fraud issue in favor of creditors rather than resolving doubts in petitioner's favor.

PARTIES IN PROCEEDINGS BELOW

The names of the parties in the proceedings below appear in the caption of the petition except that Teresa Rawoot was originally named as a codefendant and the bankruptcy court dismissed the respondents' charges as to her.

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OPINIONS BELOW

The *per curiam* opinion of the United States Court of Appeals for the Fourth Circuit (Case No. 92-2407), affirming, is unpublished. A copy of the opinion and order is at Appendix 1.

The opinion of the United States District Court for the Western District of Virginia (Harrisonburg Division) (Case No. 92-0035-H), affirming, was handed down orally from the bench. A copy of the orders are at App. 9, and the transcript of the recording of the court's opinion is at App. 6.

The opinion of the United States Bankruptcy Court for the Western District of Virginia (Harrisonburg Divi-

sion) (Case No. 5-91-00044A and No. 5-91-00045A consolidated), finding for creditors, was handed down orally from the bench. A copy of the orders are at App. 12., and the transcript of the recording of the court's opinion is at App. 16.

STATEMENT OF THE JURISDICTION

Judgment for creditors was entered by the United States Bankruptcy Court for the Western District of Virginia (Harrisonburg Division) (Case No. 5-91-00044A and No. 5-91-00045A consolidated) on February 6, 1992. Jurisdiction in the bankruptcy court was founded on 28 U.S.C. Sec. 1334 and 28 U.S.C. 157(a).

The order of the United States District Court for the Western District of Virginia (Harrisonburg Division) (Case No. 92-0035-H), affirming, was entered October 8, 1992. Jurisdiction in the U. S. District Court was founded on 28 U.S.C. 158(a).

The order of the U. S. Court of Appeals for the Fourth Circuit (Case No. 92-2407) was entered December 10, 1993. Jurisdiction in the U. S. Court of Appeals was founded on 28 U.S.C. 158(d).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The U. S. Constitution:

Article I, Section I

"All legislative powers herein granted shall be vested in a Congress of the United States . . ."

The Fifth Amendment
Due Process Clause

". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . ."

FEDERAL STATUTES

11 U.S.C. Section 523(a)(2)(A) and (C):

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, or 1328(b) of this title [11 USCS § 727, 1141, or 1328(b)] does not discharge an individual debtor from any debt—

* * * *

(2) *for money*, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

* * * *

(C) *for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor* and aggregating more than $500 for "luxury goods or services" incurred by an individual debtor on or within forty days before the order for relief under this title [11 USCS §§ 101 et seq.], *or cash advances aggregating more than $1,000 that are* extensions of consumer credit under an open end credit plan *obtained by an individual debtor on or within twenty days* before the order for relief under this title [11 USCS §§ 101 et seq.], *are presumed to be nondischargeable*; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.); [emphasis supplied]

* * * *

Federal Rules of Bankruptcy Procedure:

Rule 8013. Weight Accorded Bankruptcy Judge's Findings of Fact

. . . Findings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Rule 9017. Evidence

The Federal Rules of Evidence . . . apply in cases under the Code.

Federal Rules of Evidence:

Rule 301. Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

STATEMENT OF THE CASE

A. The Proceedings Below

This appeal involves an adversary proceeding in bankruptcy brought by respondents, creditcard creditors Signet Bank and Citibank, to obtain determinations of nondischargeability of cash advances in the respective amounts of $1200 and $2250 pursuant to 11 U.S.C. Section 523(a)(2)(A) and (C) of the Bankruptcy Code. In their complaints, as amended, creditors alleged in pertinent part that petitioner had within 20 days of filing for bankruptcy relief obtained the cash advances "by false pretenses, a false representation, or actual

fraud." Petitioner admitted obtaining the cash advances within 20 days of filing for Chapter 11 relief but denied they were obtained through any fraud.

At the trial of their fraud claims on December 6, 1991, creditors' sole trial exhibits were the bankcard statements for the month of May 1991 for petitioner's credit card accounts, in which month the transactions at issue occurred. Creditors had conducted no other discovery in preparation for the trial of their fraud claims.

The Citibank bankcard statement exhibit established that petitioner had obtained a cash advance of $2250 from his Citibank creditcard on May 1, 1991—14 days prior to his having filed for Chapter 11 relief. App. 25. The Signet statement reflected that petitioner had obtained a cash advance of $1200 on May 7, 1991—seven days prior to his filing for Chapter 11 relief. App. 24. Accordingly, the court found the presumption of nondischargeability to be applicable to the transactions pursuant to 11 U.S.C. Section 523(a)(2)(C).

Thereupon, petitioner presented evidence through testimony and corroborating exhibits to show that at the time he obtained the cash advances he had not intended to file for bankruptcy relief; that at the time he obtained the advances he had believed he would be able to repay the debts according to the terms of his credit contracts; and, that when he subsequently filed for Chapter 11 relief, he did so with the sole intent of reorganizing his business acquisition debt.

At the close of trial, the bankruptcy court found that it did "not doubt the sincerity of [petitioner's] hope" to repay the cash advances. App. 23. However, the court went on, "But I just don't feel that that is sufficient to rebut the presumption which is created in favor of [creditors] in this case." *Id.* Accordingly, the bankruptcy court ruled the debts to be nondischargeable.

On appeal to the U.S. District Court, that court concurred in the trial court's finding that petitioner "unques-

tionably had a subjective belief . . . that he could [repay the advances.] That is clearly a subjective statement of belief or intent." App. 7. However, the district court ruled that fraudulent intent was not presumed by subparagraph (C). The court stated, "[T]here is nothing in this subparagraph (C) that says any word about the intent. The court concludes that intent is not required under [subparagraph] (C)." *Id.*

The district court went on to reason that the fraud contemplated by the statutory presumption enacted by Congress for the benefit of creditors was a constructive fraud that was given rise "by operation of statute, not otherwise a presumption of fraud." *Id.*

On appeal to the U.S. Court of Appeals for the Fourth Circuit, that court affirmed the lower courts' rulings for creditors without addressing the lower courts' findings of fact of petitioner's "sincere" and "subjective" intent to repay the cash advances, but did so on the basis of its concluding that petitioner's evidence failed to rebut the presumption. App. 4.

B. The Facts

Petitioners is a certified public accountant and former hotel controller with Marriott Corporation. He purchased in May 1989, The Edinburg Mill, a large restaurant and catering facility serving largely the tourist industry in the Shenandoah Valley.

With the onset of the economic recession, his business foundered and he attempted to reschedule his business acquisition debt. By May of 1991, he had secured agreements from Dominion Bank and the Small Business Administration, coholders of the first trust on his business, for the rescheduling of the debt. App. 18. At that same time, he was awaiting a response from his second trust holder, a Paul Bynum, to a formal offer of reorganization that petitioner's Fairfax, Virginia attorney, Brien Roche, had mailed to Bynum in late April 1991. App.

19-20. Petitioner had been involved in litigation of a fraud claim against Mr. Bynum in connection with the sale of the Mill. App. 19. In an earlier conversation, Bynum had indicated he might be willing to renegotiate the debt, and petitioner was optimistic that he would be able to obtain the debt rescheduling he needed in order for the business to survive the recession. App. 20.

However, when petitioner had not obtained a response from Bynum by mid-May 1991 to his formal offer letter, he made the "last minute decision" to file for reorganization relief under Chapter 11 of the Bankruptcy Code. App. 19. When he decided to file for formal bankruptcy relief, he did so with the sole intent of reorganizing his business debt. However, because he was a sole proprietor, he had to file in his individual capacity, and accordingly, had to schedule all his existing debts, including his personal credit card debts.

Although he had filed for formal Chapter 11 relief, at that time he remained hopeful that he would be able to achieve a private renegotiation of his business debt with Mr. Bynum because "it did not make sense for Mr. Bynum, [for] us to go through this." App. 19-20.

At the time of his filing for Chapter 11 relief, he was current in all his personal debts and expenses and had an exemplary credit rating, having used his credit cards for 20 years or more. App. 20. Respondent creditors' trial exhibits show that at the time he took the cash advances at issue, he was current in his payments on both accounts, that he had high credit limits on both accounts, and that he still had available credit to him after debiting the cash advances. (Creditors' trial exhibits at App. 24, 25.)

In spite of the economic downturn, and rather than filing for bankruptcy liquidation relief, petitioner sought to reorganize his business debt because, based on his prior experience, he expected his business revenues to increase according to the normal seasonal upswing. App. 18. He

also was optimistic that the economy would pull out of the recession, as was widely predicted by national economists. *Id.*

In addition to an expected increase in his business revenues, petitioner expected to be able to obtain additional employment outside his business, which he co-managed with his wife. At the time he obtained the cash advance funds at issue, he was actively seeking outside employment in his area of accounting, and he had several job applications pending right at that time. App. 17.

Although he was current in his personal debts, his shortfall in income due to the recession had made it necessary for him to borrow on his personal credit cards. App. 20. However, this was nothing new, as it had been necessary for him to borrow on his credit cards at times during the prior 20 years he had been using them. He had never had any trouble repaying his credit card debts throughout that period, and he did not think anything different when he used them the times in question. *Id.*

Pursuant to his filing for Chapter 11 relief, as a debtor in possession, petitioner filed with the bankruptcy court the requisite monthly financial statements, commencing with the month of May 1991, showing in detail his income and expenses.

After filing for Chapter 11 relief, petitioner remained unable to achieve a private reorganization agreement with his creditor Mr. Bynum, and his business continued to founder under the unrelenting grip of the economic recession. He finally closed his business in September 1991, and that same month he returned to work as a controller with Marriott hotels. Ownership of the Edinburg Mill reverted back to petitioner's secondtrust holder, Mr. Bynum, and after the intervening three years it continues to sit vacant.

In November 1991, petitioner converted his Chapter 11 bankruptcy proceeding to outright liquidation under Chap-

ter 7, and only then did he cease filing his detailed monthly income statements with the bankruptcy court. These detailed income statements were part of petitioner's bankruptcy record and as such were public records. Creditors had free access to these records and were free to introduce them into evidence at trial if they had been supportive of their fraud claims, but creditors chose not to.

Trial of creditors' fraud claims involving the two cash advances was held on December 6, 1991. Thus at that time, rather than a Chapter 11 debtor, petitioner appeared at trial before the bankruptcy court as a Chapter 7 debtor.

At trial, petitioner presented extensive evidence—testimony and corroborating exhibits—of his belief at the time he took the cash advances that he would be able to repay the advances and of his intent to repay them by virtue of his efforts to reorganize his business debts privately. In closing arguments, counsel for creditors argued, "[T]he reason this subhapter (C) was created was to get out of this subjective area [of intent.]" App. 21.

At the close of trial, the bankruptcy court found that it did "not doubt the sincerity of [petitioner's] hope" to repay the cash advances. App. 23. However, the court went on, "But I just don't feel that that is sufficient to rebut the presumption which is created in favor of [creditors] in this case." Accordingly, the bankruptcy court ruled the debts to be nondischargeable.

Although petitioner's prior Chapter 11 status was made clear at trial, the bankruptcy court apparently overlooked the fact and the fact that petitioner's detailed income statements were part of the bankruptcy record. The amount of petitioner's income was not put into issue by creditors at trial, and petitioner testified only that, as is usually the case with sole proprietors, his salary was whatever the business' cash flow allowed. App. 20.

In spite of this evidence in the record, the bankruptcy court stated at the close of trial the finding that petitioner

had "no salary" from the business with which to repay the advances. App. 22. The court further found that petitioner's thinking "that his busines could be preserved [outside of bankruptcy] was simply his subjective analysis, his hope [which] never came to pass." *Id.*

In addition to overlooking the fact of petitioner's having been a Chapter 11 business debtor for the initial six months of his bankruptcy proceeding, further evidence in the trial record to which the bankruptcy court made no reference is the following:

—the fact of the unexpectedly gripping economic recession that caught petitioner (and others) unawares.

—evidence of petitioner's expectations at the time he obtained the cash advances of increased future income and of an economic turnaround.

—evidence of petitioner's excellent personal credit standing at the time he obtained the cash advances as apparent from the face of the creditors own trial exhibits.

—evidence of petitioner's similar prior usage of the credit cards at issue for over the course of 20 years.

The U.S. District Court, sitting in appellate jurisdiction, affirmed the trial court's finding of fact of petitioner's "subjective" intent to repay the cash advances. App. 7. The court ruled, however, that the statutory presumption contained in Section 523(a)(2)(C) did not presume fraudulent intent or actual fraud, but rather involved a constructive fraud, or fraud "by operation of statute, not otherwise a presumption of fraud." *Id.*

With regard to the argument that the petitioner initiated his bankruptcy as a Chapter 11 debtor and therefore, that his income was a matter of the bankruptcy record, the district court ruled that petitioner's failure to produce *at trial* "proof of what salary he had been paid" was "significant . . . which would have been objective evidence and far more bearing a greater element of proof

than subjective belief . . ." App. 8. The district court also neglected to make any reference to such matters in evidence as the unexpectedly gripping and protracted economic recession, the petitioner's excellent credit standing, and the petitioner's similar prior credit card usage for 20 years.

On appeal to the Fourth Circuit, that court ignored the lower court's findings of petitioner's "sincere" and "subjective" intent to repay the advances. The court also was silent concerning the district court's legal conclusion that the Sec. 523(a)(2)(C) presumption was not a presumption of actual fraud but rather a constructive fraud "by operation of statute."

The Fourth Circuit also neglected to address the issue of petitioner's initial status as a Chapter 11 debtor and of his income being a matter of the bankruptcy record to which creditors had easy access and which evidence creditors were free to use at trial if it in anyway supported their fraud claims. Rather, the Fourth Circuit court merely stated, "There is no evidence in the [trial] record before us that [petitioner] had any income at the time of the charges." App. 4.

Regarding the evidence of petitioner's intentions and efforts to reorganize his business debt outside of bankruptcy, the Fourth Circuit ignored this evidence and observed instead that there was no "evidence that [petitioner's] business, which has since failed, *was likely to* rebound suddenly . . . [emphasis supplied.]" *Id.* The court, apparently unaware of the common business practice of debt renegotiation in times of economic downturn, further observed, "Nor is there any evidence . . . that his primary creditor was inclined to relieve [him of *any or all of* his debt burden." [emphasis supplied] *Id.*

As to petitioner's expectations of increased future earnings with the anticipated winding down of the recession, the expected seasonal upturn in his business' revenues,

and expected personal earnings from outside his business from then-pending job applications, the Fourth Circuit summarily dismissed this evidence with the statement that there was no evidence that his "search for another job . . . *would prove* productive [emphasis supplied.]" *Id.*

Although the Fourth Circuit found relevant that petitioner was "a certified public accountant with an MBA and over 15 years of accounting experience" *id.*, it did so stating only that such evidence supported creditors' argument that petitioner was "fully aware of the scope and consequences of his actions" in securing the cash advances "in his then-current financial circumstances." *Id.* The court was silent however regarding any inference that it was in part due to his being a CPA that petitioner was concerned about preserving his good reputation and good credit standing and accordingly had no intention of filing for bankruptcy relief. Although the court acknowledged that at the time "the overall economy was weak" App. 2., it nevertheless indicated its belief that because petitioner was a CPA, he should have known better than to borrow the $3450 when he did.

REASONS FOR GRANTING THIS WRIT

The rulings of the U.S. Court of Appeals for the Fourth Circuit, the U.S. District Court for the Western District of Virginia (Harrisonburg Division), and the U.S. Bankruptcy Court for the Western District of Virginia (Harrisonburg Division) are grievous error and strongly warrant the review of this Court for the following reasons:

I. THE LOWER COURTS' RULINGS AMOUNT TO A REPUDIATION OF THE EXPRESS INTENT OF CONGRESS AS TO THE PURPOSES AND GOALS OF THE U.S. BANKRUPTCY CODE AND, THEREFORE, ARE IN VIOLATION OF THE LEGISLATIVE SUPREMACY CLAUSE, ARTICLE I, SECTION 1, OF THE U.S. CONSTITUTION.

Within the framework of the U.S. Bankruptcy Code, a good faith debtor is to be granted a discharge from debt honestly incurred and to be accorded a fresh start in order that he might once again become an active and contributing member of society, relieved of the debt and stigma associated with failed financial circumstances. *Local Loan Co. v. Hunt,* 292 U.S. 234, 244 (1934); *Lines v. Frederick,* 400 U.S. 18, 91 S.Ct. 113, 27 L.Ed.2d 124 (1970); and H.R. Rep. No. 595, 95th Cong., 1st Sess. 125, reprinted in 1978 U.S. Code Cong. (Legislative history for the Bankruptcy Reform Act of 1978).

A creditor seeking to challenge the dischargeability of a debt on the grounds that the debt was incurred through fraud must initiate an adversary proceeding in the bankruptcy court under Section 523(a)(2) of the Code. The bankruptcy court as the trier of fact and of law is to determine the dischargeability of the debt after a full and fair hearing of the parties' evidence on the fraud issue. 11 U.S.C. 523(c).

Settled law dictates that in order to prevail on its fraud claim, a creditor carries the burden of affirmatively prov-

ing actual fraud. This Court has made it clear that by "actual fraud" is contemplated "moral turpitude" and intentional wrongdoing—

> "It is the settled doctrine of the court that 'fraud' in the Act of Congress defining the debts from which a bankrupt is not relieved by a discharge in bankruptcy means 'positive fraud' or fraud in fact involving moral turpitude or intentional wrong, as does embezzlement, and not implied fraud or fraud in law, which may exist without the imputation of bad faith or immorality."

Ames v. Moir, 138 U.S. 306, 311; 11 S.Ct. 311, 312; 34 L.Ed. 951 (1891); *see also, Neal v. Clark,* 95 U.S. 704, 24 L.Ed. 586 (1878). As recently as 1991, this Court ruled that it was the creditor's burden to establish fraud by a preponderance of the evidence, *Grogan v. Garner,* 498 U.S. 279; 111 S.Ct. 654; 112 L.Ed. 755 (1991); and not the debtor's burden to prove his innocence.

A. The Lower Courts' Rulings Applying The Statutory Presumption Of Fraud Provided For In Section 523(a)(2)(C) Of The U.S. Bankruptcy Code Repudiate The Express Intent Of Congress In That They Contravene The Plain Meaning Of The Statute And They Are In Conflict With Reported Federal Cases Applying The Statute.

Subparagraph (C) was added to Sec. 523(a)(2) as one of the "Consumer Credit Amendments" (Subtitle A, Title III, P.L. No. 98-353), enacted as part of the Bankruptcy Amendments and Federal Judgeship Act of 1894. The "Consumer Credit Amendments" were the result of intense lobbying by creditors who related tales of widespread abuse by dishonest debtors going on borrowing and buying sprees—the so-called practice of "loading up"—on the eve of bankruptcy with the intent of avoiding the debt thus incurred through filing for bankruptcy relief. *In Re Leaird,* 106 B.R. 177, 179-180, n.1 (Bkrtcy. W.D. Wis. 1989); and, Gross, "The Case for Narrow Construc-

tion of the Consumer Credit Amendments," 135 U.Pa.L. Rev. 59 (1986).

Sec. 523(a)(2)(C) provides for a presumption of "nondischargeability" to arise in creditors' favor if *inter alia* a debtor obtains a cash advance greater than $1000 within 20 days of filing for bankruptcy relief. While the amendment itself does not expressly state that the presumption is a presumption of "actual fraud", the plain meaning of its lead-in language "for purposes of subparagraph (A) . . .", refers the reader back to Section 523(a)(2)(A), which lists specifically "actual fraud" as being the ground for a determination of nondischargeability.

The meaning of this statutory language is plain and unambiguous: the statutory presumption of nondischargeability is a presumption of actual fraud. Moreover, the only legislative history available for the amendment makes it further clear that Congress added the presumption to deal specifically with fraudulent conduct of dishonest debtors going on credit sprees on the eve of filing for bankruptcy relief with the intention of avoiding repayment. The Senate report accompanying a version of the eventual (C) provision stated:

> Section 523 is amended and expanded to address a type of unconscionable or fraudulent debtor conduct not heretofore considered by the code—that of loading up. In many instances, a debtor will go on a credit buying spree in contemplation of bankruptcy. The new subsection [(C)] creates a rebuttable presumption. . . .

S. Rept. No. 98-65, 98th Cong., 1st Sess. (1983); *Leaird, supra* at 179; *In Re Koch*, 83 B.R. 898, 902 (Bkrtcy. E.D. Pa. 1989); and *In Re Faulk*, 69 B.R. 743, 752 (Bkrtcy, N.D. Ind. 1986).

In addition, this interpretation of the plain meaning of the language of Sec. 523(a)(2)(C) is in harmony with the structure of the Bankruptcy Code as a whole. The fact that the presumption was made a part of the preexisting

actual fraud exceptions to discharge contained in subsection 523(a)(2) is significant, as opposed to its being inserted elsewhere in Section 523(a) with other grounds for exceptions to discharge. For example, Sec. 523(a)(5) pertains to the spousal and child support exception to discharge; Sec. 523(a)(8) pertains to the government student loan exception.

If Congress sought to except from discharge any debts falling within a certain number of days, i.e. "the eve", of a debtor's filing for bankruptcy relief—without regard to whether the debtor incurred the debts through actual fraud—it certainly knew how to do so. *Ohio v. Kovacs,* 469 U.S. 274, 279 (1985) (Congress knew how to limit the application of the Code to contracts; its failure to do so in Sec. 101(4) indicates its intent for "claim" to be defined broadly.); and, *NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 522-23 (1984) ("Obviously, Congress knew how to draft an exclusion for collective-bargaining agreements when it wanted to; its failure to do so in this instance indicates that Congress intended that Sec. 365(a) apply to all collective-bargaining agreements covered by the NLRA.")

In the instant case, Congress could easily have added a new subsection to Sec. 523(a), e.g. a "Sec. 523(a)(13)", crafting a whole new exception to discharge that did not involve the "sticky" issues of actual fraud and fraudulent intent. However, this Congress chose not to do. Rather it crafted the language of the new subparagraph (C) and purposefully appended it to the "actual fraud" provision of 523(a)(2) in order to implement its intent to establish a rebuttable presumption of actual fraud with regard to eve of bankruptcy charges. *Leaird, supra,* at 179; and *Koch, supra* at 902.

This court has stated time and again that the meaning of a statute must first be sought in its language. If the language is plain, the inquiry of the courts should end there and their sole function becomes to enforce the stat-

ute according to its terms. *Caminetti v. United States,* 142 U.S. 470, 485 (1917) (citations omitted); *INS v. Cardozo-Fonseca,* 480 U.S. 421, 432 n.12 (1987) (citations omitted). (There is a "strong presumption that Congress expresses its intent through the language it chooses."); and, *United States v. American Trucking Ass'ns.,* 310 U.S. 534, 543 (1970). ("There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes.")

Particularly in the area of Bankruptcy Code cases, the Court has relied upon the express language of the statute, turning to its legislative history and the study of textual context only to ensure that its interpretation is not "demonstrably at odds with the intentions of [the Code's] drafters." *United States v. Ron Pair Enters,* 489 U.S. 235, 242 (citing *Griffin v. Oceanic Contractors,* 458 U.S. 564, 571 (1982)).

In the case at bar, inquiry into the legislative history of the 1984 amendment creating the (C) presumption and into the issue of the structural context of the Code itself serve only to reinforce this reading of the "plain meaning" of the statute. It is clear, then, that the presumption of "nondischargeability" of Sec. 523(a)(2)(C) is a presumption of "actual fraud", and that the fraud presumed is not a new legislated contrivance of constructive fraud, or "fraud by operation of statute," as the district court characterized it.

As a presumption of actual fraud, it presumes the existence of all the legal requisites of fraud: a representation that is false, intentionally made, relied upon by the complainant to its detriment. 37 Am. Jur. 2d Sec. 445, Fraud and Deceit ("Elements of Fraud").

In the context of credit card usage, four of the five elements of fraud are deemed satisfied when a debtor incurs credit card debt and then seeks discharge of the

debt through bankruptcy. Upon using the card the debtor is deemed to represent to the credit card issuer his ability to repay the debt thus incurred. When the debtor subsequently is unable to repay the debt and files for bankruptcy relief, that earlier representation is deemed to have been untrue. The creditor, by virtue of having allowed the debtor to use the card with subsequent nonpayment, is deemed to have relied on the false representation to its detriment. Accordingly, the only remaining element of fraud left to be determined is whether the debtor intended to make the false representation at the time he used the card. That is, whether the debtor at the time he used the card knew he would be unable to pay the debt and/or intended to avoid repayment by filing for bankruptcy relief. *In Re Shrader*, 55 B.R. 608, 611 (Bkrtcy. W.D. Va. 1985); *In Re Davis*, 42 B.R. 611, 613 (Bkrtcy E.D. Va. 1984); and, *In Re Buford*, 25 B.R. 477, 481-82 (Bkrtcy. S.D.N.Y. 1982).

Thus all creditor fraud challenges to dischargeability of credit card debt turn on this issue of fraudulent intent, and the presumption of Sec. 523(a)(2)(C) in essence presumes the debtor's fraudulent intent. *Leaird, supra* at 180; and, *In Re Orecchio*, 109 B.R. 285 (Bkrtcy. S.D. Ohio 1985).

At trial of the case at bar, however, creditors strenuously argued that "the whole reason that this subchapter (C) was created was to get us out of this subjective area [of intent]." App. 21. It is apparent from the record of the proceedings below that the bankruptcy and district courts adopted creditors' position. At the close of trial, the bankruptcy court concluded that it did "not doubt the sincerity of [debtor's] hope" to repay the consumer debts at issue. App. 23. However, the court ruled that debtor's evidence nevertheless failed to overcome the presumption in creditors' favor.

On appeal to the U.S. District Court, the district court affirmed the lower court's finding of debtor's lack of

fraudulent intent, stating, "[Debtor] unquestionably had a subjective belief . . . that he could [repay the advances.]" App. 105. However, that court ruled that "intent is not an element of subsection (C) [Sec. 523 (a)(2)(C)]." *Id.*; that "there is nothing in this subparagraph (C) that says any word about the [debtor's] intent." *Id.* 104; that, "The court concludes that intent is not required under . . . (C)." *Id.*

The lower courts' rulings that petitioner's evidence, which showed his lack of fraudulent intent, was insufficient to rebut the (C) presumption are grave error and merit the review of the Court.

B. The Ruling Of The Fourth Circuit Contravened Bankruptcy Rule 8013 That On Appeal "Due Regard Shall Be Given To The Opportunity Of The Bankruptcy Court To Judge The Credibility Of The Witnesses."

On appeal to the Fourth Circuit, that court simply ignored in fundamental part the lower courts' statements as to the debtor's lack of fraudulent intent and simply affirmed the lower courts' conclusory rulings on the legal insufficiency of petitioner's evidence to overcome the statutory presumption, itself stating, "[Petitioner] could not make the requisite showing to rebut the presumption." App. 4.

Federal Bankruptcy Rule 8013 dictates that in appeals of bankruptcy court decisions, "due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses." While the rule specifically addresses appeals to district courts or bankruptcy appellate panels, there is no reason to think it not equally applicable to appeals to the U.S. Court of Appeals.

It was in the clearest terms at the very close of trial, that the bankruptcy court stated its first hand impressions of the evidence of petitioner's state of mind as of the time he had obtained the cash advances. The bankruptcy

court stated, "He hoped he would [be able to make the contractual payments.] I don't doubt the sincerity of his hope." App. 23.

This clear statement of exoneration of petitioner from fraudulent intent was the finding of fact on which the bankruptcy court was obliged to rely, but failed to do so, in determining whether the evidence was sufficient to rebut the presumption. The district court gave "due regard" to this clear statement of exoneration and concurred in the bankruptcy court's finding, observing, "[Petitioner] unquestionably had a subjective belief" that he could repay the advances. App. 7. But for the district court's misapprehension that fraudulent intent was not an element of the presumption, it would have been compelled to find for petitioner.

Finally, this clear statement of exoneration was the finding of fact to which the Fourth Circuit was obliged to give due regard but failed to do so. Rather, the Fourth Circuit fell into the snare of confusing the trial court's finding of fact of petitioner's lack of fraudulent intent with that court's conclusory statement of law that "it just [didn't] feel that that is sufficient to rebut the presumption . . ." App. 23. Thus, the Fourth Circuit disregarded the bankruptcy court's assessment of petitioner's credibility and relied instead on the lower courts' faulty conclusions of law as to "the requisite showing to rebut the presumption." App. 4. Accordingly, the Fourth Circuit's reasoning is fatally flawed and its affirmance of the rulings for creditors warrants the review of this Court.

II. THE BANKRUPTCY COURT MADE AND THE LOWER APPELLATE COURTS AFFIRMED SEVERAL FINDINGS OF FACT THAT WERE NOT SUPPORTED BY THE EVIDENCE, AND IN SOME INSTANCES WERE CONTRARY TO THE EVIDENCE. THESE FINDINGS ARE CLEARLY ERRONEOUS.

With the enactment in 1898 of the Bankruptcy Act (ch. 541, 30 Stat. 544 (1898) (amended 1938)), Congress officially recognized the benefit derived by society by freeing an overburdened debtor from oppressive debt and enabling him to start afresh as a productive member of society. From that time until the present, Congress has consistently placed preservation of a fresh start for the honest debtor as the foremost goal of American bankruptcy law.

The courts have honored this principle by developing over the years certain construction tenets to be employed in trials of creditors' claims seeking exception to discharge. Chief among these tenets is the rule that legislated exceptions to discharge are to be narrowly construed in favor of the debtor's discharge. 3 L. King, *Collier on Bankruptcy*, Par. 523.05A at 523-16 (15 ed. 1987); *In Re Wyatt*, 87 B.R. 874, 877 (Bkrtcy. E.D. Va. 1988) ("These construction tenets . . . illustrate the ground rules that an objecting creditor must face in proving a debt to be excepted from discharge in a bankruptcy case.")

A corollary to this is the tenet that any doubts that may arise from the trial evidence are to be resolved in favor of the debtor. If the trial court is to err in its findings from the evidence, it must do so on the side of the debtor, and not on the side of creditor. *In Re Hunt*, 30 B.R. 425, 436 (Bkrtcy. M.D. Tenn. 1983); see also, *In Re Landen*, 95 B.R. 826 (Bkrtcy. M.D. Fla. 1989); and, *In Re Mettetal*, 41 B.R. 80 (Bkrtcy. D. Tenn. 1984).

In the case at bar, this tenet was stood on its head. The lower courts seemed to take every opportunity to resolve any doubts from the evidence in favor of creditors. Furthermore, the lower courts ignored much of petitioner's evidence supporting his defense and sometimes even contorted the evidence so as to make it work against the petitioner and in support of the courts' rulings for creditors.

Even though the bankruptcy court unequivocally found from the sum total of the evidence that Petitioner had had the sincere intent to repay the cash advances at the time he obtained them, the court made several other negative findings that were not supported, and in some instances were contrary to the evidence in the record.

The trial evidence, its relevance to petitioner's effort to rebut creditors' fraud charges, and the treatment accorded it by the lower courts is set out in tabulated form as follows:

Evidence	Relevance to Defense	Court's Treatment
The economic recession and its strength	P caught unawares; his prospective planning and expectations not unreasonable	No mention A: "the overall economy was weak . . ."
P a CPA with MBA and years experience as Marriott Hotel controller	P concerned with preserving good reputation and did not intend to avoid repymnt of personal debt through bkrty	P should have known "the consequences" of borrowing funds when in financial difficulty
Credit card debt of $3450 at issue	P believed he would be able to repay debt according to contractual terms	P in "dire financial straits" and "living off credit cards"

Evidence	Relevance to Defense	Court's Treatment
The salary for P and his wife from the business was whatever "the cash flow allowed". App. 20.	P and wife earned some undefined amount of income sufficient to cause them to file for Chapter 11 relief.	T: "No salary . . . no wherewithal" to repay funds. D: *P's* failure to establish income "significant." App. 8.
P a Chapter 11 debtor until he moved on own to convert to 7	Income established by definition.	T: "no income" A: "no income in [trial] record" Ap. 4.
Detailed records of P's income in bkrtcy record since Ch. 11 debtor	Since not produced at trial by creditors, inference that not helpful to creditors	A: No evidence of income in trial record D: *P's* failure to establish income "significant"
P had excellent credit history and used creditors' credit cards for up to 20 years—Cs' trial exhibits and testimony	P wished to preserve good credit standing and had no intention of obtaining bkrtcy relief from personal debts	No mention
P used funds for non-luxury items and personal maintenance	P not "loading up" or on buying spree contemplated by statute	P in "dire financial straits" and knew couldn't repay funds
P current on credit card accounts with credit remaining to him at time took cash advances—C's trial exhibits	P believed he would be able to repay cash advances according to contractual terms	No Mention
P's expectation of increased future business revenues based on prior experience	P believed would be able to repay advances.	T.: No mention A.: No evidence that business "likely to rebound soon"
P's expectation of increased personal earnings from additional work—testi-	P believed would be able to repay advances	T: No mention D: Fact that P looked for several months

Evidence	Relevance to Defense	Court's Treatment
mony and pending job applications		"weakens argument" A: No evidence job-seeking "would prove productive."
P's efforts and expectation of rescheduling business debt outside bankruptcy—1st trust holders had agreed to rescheduling.	P intended to reorganize business debt outside bankruptcy	T: "It never came to pass" D: No mention A: *infra*
P's efforts and expectation of rescheduling; business debt outside bankruptcy—2d trust holder indicated he might be wiling—formal offer letter pending	P believed he would be able to reorganize debt outside bkrtcy.	T: No mention D: No mention A: No evidence 2d trust holder "inclined to relieve P of any or all debt"

It is readily apparent from the above chart that the lower courts repeatedly construed the trial evidence in such a way as to view the evidence in the light most favorable to creditors and to resolve doubts in favor of creditors.

One of the most glaring examples of this is the courts' "finding" that Petitioner had had no income, when petitioner's testimony had been, rather, that he and his wife were paid what "the cash flow" of their business allowed. App. 20a. Further, the unequivocal evidence is that Petitioner had been an unchallenged Chapter 11 debtor for the first six months of his bankruptcy proceeding, and accordingly, had produced to the bankruptcy court detailed reports of his income every month that he was operating as a debtor in possession under Chapter 11.

The fact that Petitioner's income reports were not made part of the *trial* record is more properly construed against creditors for their failure to produce them if such evidence would have helped their case. *Creditors'* failure

to introduce evidence of the amount of Petitioner's income clearly indicates that such evidence was not helpful to their case. The lower courts' finding that it should have been introduced by petitioner to rebut the fraud claims was clearly erroneous.

In addition to the income issue, there were several other evidentiary issues that the lower courts improperly resolved in creditors' favor which warrant the review of the Court.

III. THE LOWER COURTS' RULINGS CONTRAVENE THE EXPRESS INTENT OF CONGRESS THAT THE SECTION 523(a)(2)(C) PRESUMPTION OF FRAUD DOES NOT SHIFT THE BURDEN OF PERSUASION FROM CREDITORS TO DEBTOR, BUT RATHER ONLY SHIFTS TO DEBTOR THE BURDEN OF GOING FORWARD WITH THE EVIDENCE. THE BURDEN OF PERSUASION ON THE ISSUE OF FRAUD WAS TO REMAIN AT ALL TIMES ON CREDITORS.

The above chart demonstrates that the lower courts' findings are so decidedly pro-creditor that one is compelled to believe the courts understood the Sec. 523 (a)(2)(C) presumption of nondischargeability to shift the burden of persuasion to the debtor; that is, to require the debtor to prove that he did not commit fraud.

Such an understanding of the effect of the presumption is grave error, for Bankruptcy Rule 9017 incorporating Federal Rule of Evidence 301 in all actions brought under the Bankruptcy Code makes expressly clear that the presumption does not shift the burden of proof to the debtor. Rather it merely shifts to the debtor the burden of going forward with evidence to rebut the presumption.

In creditor actions brought under Sec. 523(a)(2)(A) prior to enactment of the presumption, the debtor needed to do nothing until creditor affirmatively made a prima facie showing of fraud. If a creditor was unable to make

such a showing, the debtor prevailed by reason of the creditor's default. Russell, *Bankruptcy Evidence Manual*, 1991-92 Ed., 120.

The sole benefit of the presumption that was intended by Congress, which is substantial, is the establishment of creditor's prima facie case. Where the facts of a case bring the presumption into play, the creditor's prima facie showing of fraud is automatically established, and the creditor is insulated from a directed verdict for insufficiency of a fraud showing in the absence of debtor's rebuttal testimony. *Leaird, supra* at 180; and, Russell, *supra* at 120. The (C) presumption, in giving rise to a prima facie showing of fraud, certainly gives credit card creditors a leg-up in claiming a fraud exception to discharge, but it does not relieve them of their ultimate burden of affirmatively proving their fraud claim. FRE Rule 301, *supra*.

It is apparent that the lower courts' rulings that effectively shifted to petitioner the ultimate burden of proving that he did not commit fraud—effectively requiring him to prove a negative—were serious error. They are wholly contrary to Congress' intent in adopting the specific 523 (a)(2)(C) provision and are contrary as well to the scheme of the Bankruptcy Code as a whole and subvert the Code's very goals and purposes.

IV. THE LOWER COURTS' RULINGS FOR CREDITORS, EFFECTIVELY RULING PETITIONER GUILTY OF FRAUD IN CLEAR DISREGARD OF EXTENSIVE EVIDENCE IN THE RECORD EXONERATING PETITIONER FROM ANY TAINT OF FRAUD, ARE GRAVELY UNJUST AND CONSTITUTE A GRIEVOUS VIOLATION OF PETITIONER'S RIGHT TO SUBSTANTIVE DUE PROCESS UNDER THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION.

There is no more important function of the due process clause of our Constitution than its guarantee of the fair and unbiased administration and enforcement of our laws.

International Shoe Co. v. Washington, 326 U.S. 310, 90 L.Ed. 95; 66 S.Ct. 154 (1945).

While it is true that no one has a constitutional right to a discharge in bankruptcy, it is equally true that once that right is granted by Congress in legislation, then all persons have an equal right to such a discharge according to the terms of that legislation. *Mathews v. Eldridge*, 424 U.S. 319, 47 L.Ed. 2d 18, 96 S.Ct. 893 (1976).

In the case before the bar, by reason of the lower court's improper rulings for creditors, petitioner has been unjustly denied that right. He has been denied financial property in a relatively small amount of funds ($3450); but, what is far more significant, he has been denied the property of his good name; his heretofore untarnished reputation for honesty, integrity, and fair dealing. Petitioner entered into Chapter 11 bankruptcy proceedings with the clear intention of reorganizing his business debts to allow him to preserve a fine business in the Shenandoah Valley. Due to the courts' improper rulings, he emerged from bankruptcy proceedings having been found guilty of fraud against his personal credit card creditors—creditors with whom he had had prior good faith dealings for wholly 20 years.

There can be no question that this unjust result of the lower courts' rulings is a violation of petitioner's constitutional right to substantive due process. It therefore starkly underscores the need for the Court to grant a review of this case.

CONCLUSION

This case comes to the Court having traversed through the American bankruptcy system. The petitioner is an individual who turned to the federal Bankruptcy Code with the hope of preserving a business that had foundered in the midst of one of the most difficult economic periods this Country has known since the Great Depression of the 1930's. The petitioner, therefore, is one who has experienced first hand the workings of our bankruptcy laws. The petitioner's plea to the Court is that this case is an unfortunate illustration of the miscarriage by lower courts of those laws.

In this petition for a writ of certiorari, petitioner has represented to the Court that from a fair and impartial review of the record of the proceedings below, it is clear that his considerable evidence of his state of mind at the time he incurred certain debts at issue rebutted the presumption of fraud that attached to those debts by operation of Section 523(a)(2)(C) of the Bankruptcy Code. The bankruptcy and district courts acknowledged petitioner's evidence as showing his "subjective" and "sincere" intent to repay the cash advances. Such an acknowledgement was a clear statement by the courts exonerating petitioner from any taint of fraudulent conduct with respect to the debts and compelled a ruling for petitioner.

Nevertheless, the courts went on to rule in favor of Respondent creditors, reasoning that petitioner's showing of his lack of fraudulent intent was not sufficient to rebut the presumption that attached to the debts. This consruction of 11 U.S.C. 523(a)(2)(C) is a gravely incorrect statement of the law.

In addition to the lower courts' rulings that the (C) presumption was not overcome by petitioner's evidence showing lack of fraudulent intent, the courts made other findings of fact that were not supported by the record

and in instances were contrary to the evidence in the record. These findings are clearly erroneous.

Petitioner's evidence along with creditors' own trial exhibits show that petitioner dealt with creditors in good faith at all times. The evidence shows that petitioner strove diligently to resolve his financial difficulties brought on by the recession and to avoid filing for any form of bankruptcy relief.

On the other hand, the creditors failed to produce any evidence whatsoever that imputed bad faith to petitioner's conduct. It is clear, therefore, that creditors failed to carry their burden of affirmatively proving that petitioner committed fraud upon his obtaining the cash advances at issue. Accordingly, in the interests of justice and the fair administration of our bankruptcy laws, petitioner pleads that the Court grant this writ to allow for a proper review of the lower courts' rulings in order that appropriate action may be taken with regard to the rulings and the integrity of the American bankruptcy system be preserved.

Respectfully submitted,

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March 10, 1994

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 92-2407

SIGNET BANK/VIRGINIA,
Plaintiff-Appellee,

v.

ABBAS A. RAWOOT,
Defendant-Appellant.

No. 92-2408

CITIBANK SOUTH DAKOTA, N.A.,
Plaintiff-Appellee,

v.

ABBAS A. RAWOOT,
Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Virginia, at Harrisonburg.
James H. Michael, Jr., District Judge.
(CA-92-35-H, CA-92-36-H, BK-91-434-5)

Argued: October 27, 1993

Decided: December 10, 1993

Before ERVIN, Chief Judge, and HALL and
LUTTIG, Circuit Judges.

OPINION

PER CURIAM:

Defendant-Appellant Abbas A. Rawoot appeals from the district court's order affirming the bankruptcy court's judgment against him. We affirm.

I.

Abbas Rawoot and his wife, a certified accountant and an attorney respectively, acquired and took over management of a restaurant and lounge known as the Edinburg Mill (the Mill) in May 1989. The Mill soon experienced revenue shortfalls, however, and the new restauranteurs were required to apply all incoming revenue to staff salaries and other business expenses. J.A. at 74. In October 1990, Mr. Rawoot was forced by the restaurant's deteriorating financial condition to seek new employment, which he still had not found in the spring of 1991. *Id.* at 106. As the Mill's business continued to decline throughout the spring of 1991, a period during which the overall economy was weak, the Rawoots were unable to take a salary from the restaurant, *id.* at 55-56, 74, and resorted to living off of credit cards, *id.* at 55, 105.

On May 1 and May 7, 1991, Mr. Rawoot obtained two credit card cash advances, one in the amount of $2,250 on his Citibank Visa, and one in the amount of $1,200 on his Signet card.[1] On May 14, one week after the second advance, Mr. Rawoot filed for relief under Chapter 11 of the Bankruptcy Code.[2]

The two banks that funded the cash advances filed this consolidated action in the bankruptcy court to have Mr.

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[1] The $1,200 advance was actually in the form of a purchase at the restaurant, but the bankruptcy court held, and Rawoot concedes, that this purchase was a cash advance. J.A. at 74, Appellant's Br. at 5.

[2] The bankruptcy proceeding was subsequently converted to a Chapter 7 proceeding.

Rawoot's debt from the cash advances declared nondischargeable as fraudulently obtained debt under 11 U.S.C. § 523(a)(2). The parties stipulated that the banks had established the presumption of fraudulent intent under section 523(a)(2)(C). J.A. at 39-40. The bankruptcy court found that Mr. Rawoot failed to rebut this presumption, and granted judgment in favor of the banks. The distirct court affirmed, and this appeal followed.

II.

Section 523(a)(2)(A) of the Bankruptcy Code provides that debt incurred through false pretenses or representations, or through actual fraud, will be not be discharged in bankruptcy. 11 U.S.C. § 523(a)(2)(A). Section 523(a)(2)(C) provides that

> for purposes of [section 523(a)(2)(A)] . . . cash advances aggregating more than $1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within twenty days before the order for relief under [the Bankruptcy Code], are presumed to be nondischargeable.

11 U.S.C. § 523(a)(2)(C). As the parties agree that appellees established the section 523(a)(2(C) presumption, the only question presented in this case is whether the bankruptcy judge erred in finding that Mr. Rawoot failed to rebut the presumption of nondischargeability. To rebut this presumption, Mr. Rawoot was required to "raise[] a substantial doubt in the mind of the [bankruptcy judge] as to the existence of the presumed intent [to defraud his creditors]." *In re Orecchio,* 109 B.R. 285, 290 (Bankr. S.D. Ohio 1989).

The bankruptcy judge did not err in holding that Mr. Rawoot failed to raise substantial doubt as to his fraudulent intent. As the court found, Mr. Rawoot had no salary at the time of the advances, J.A. at 74, and consequently had "no wherewithal whatsoever to pay the credit

card charges." *Id.* at 75. Although the court may not have doubted the sincerity of Mr. Rawoot's hopes that he could someday salvage his failing business, *id.*, the court expressly found that "Mr. Rawoot knew at the time [of the charges] that he was unable to make the contractual payments," and therefore could not make the requisite showing to rebut the presumption. *Id.* at 76; *see, e.g., In re Lay*, 29 B.R. 258, 260 (Bankr. M.D. Fla. 1983) (credit purchase with knowledge of inability to pay is non-dischargeable under section 523(a)(2)(A)).

The court's factual finding that Mr. Rawoot knew he was unable to repay the cash advances likewise was not clearly erroneous. *Cf. Williamson v. Fireman's Fund Insurance Co.*, 828 F.2d 249, 252 (4th Cir. 1987) (deference to bankruptcy court's finding of fraudulent intent is particularly appropriate). There is no evidence in the record before us that Mr. Rawoot had any income at the time of the charges. J.A. at 106. Rawoot himself admits that he was unable to take a salary from his business, *id.* 55-56, 74, and that he and his wife had resorted to living off of credit cards, *id.* at 55, 105. There is, moreover, no evidence that the Rawoots' business, which has since failed, was likely to rebound suddenly from its seriously distressed financial condition. Nor is there any evidence that Mr. Rawoot's search for another job, which had been ongoing for seven months at the time of the advances, would prove productive, *id.* at 106, or that his primary creditor was inclined to relieve Mr. Rawoot of any or all of his debt burden.

In short, Mr. Rawoot was in dire financial straits when, only a week or two prior to filing for bankruptcy, he obtained the cash advances at issue here. There is no question that, as a certified accountant with an MBA and over fifteen years of accounting experience, *id.* at 23, Mr. Rawoot was fully aware of the scope and consequences of his actions in securing the cash disbursements in his then-current financial circumstances.

The judgment of the district court is affirmed.

AFFIRMED

[Filed Apr. 9, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

Civil Action No. 92-0035-H

ABBAS A. RAWOOT,
Appellant,

-VS-

SIGNET BANK/VIRGINIA,
CITIBANK (SOUTH DAKOTA) N.A.,
Appellees,

September 30, 1992

TRANSCRIPT OF HEARING BEFORE
THE HONORABLE JAMES H. MICHAEL, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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By: WILLIAM D. HEATWOLE, ESQ.
Counsel on behalf of the Appellees

* * * *

[22] THE COURT: All right, thank you. We have thrashed around here a great deal in this case, which this court believes is relatively quickly resolved. If one looks at Section 11, U.S. Code Section 523(a)—well, I am not even go to try to break it down. But in the foregoing portion of that section, before (2)(C), there are references to intent, in (B)(iv), "that the debtor cause to be made or published with intent to deceive."

But when you go to paragraph (C), that is, Section 523(a)(2)(C) reads as follows. Well, I'm not going to read the whole thing, but it is obvious that in that particular section, there is no reference made to intent of any sort. That this court finds significant in that, obviously, the writers of this Code knew what intent meant because they used it in this very section. And yet there is nothing in this subparagraph (C) that says any word about the intent. The court concludes that intent is not required under subsection (C).

That then brings about by operation of statute, not otherwise, a presumption of fraud. If that presumption is not defeated, then the statute has declared the conduct a fraud. There is nothing more needed to be done in terms of clear, cogent and convincing proof, the old three "C" standard in Virginia. The statute has established fraud unless the [23] presumption is rebutted.

The rebuttal would require the debtor to set out sufficient evidence, that is, factual material, to rebut that presumption. That factual material is weighed by the trial judge. Whatever conclusion he reaches is a factual conclusion. So that the clearly erroneous standard at this point applies to the decision of the court below.

Now, clear it is that intent is not an element of subsection (C). Mr. Rawoot unquestionably had a subjective belief or more properly stated in his words, he "sincerely hoped" that he could reorganize under Chapter 11 and that he could salvage his business. That is clearly a subjective statement of belief or intent.

I'm concerned about the timing here, particularly in relation to the letter to the major creditor, Mr. Bynum. At some point after the letter went forward to Mr. Bynum, it was obvious to Mr. Rawoot there wasn't going to be an acceptance, and at that point the balloon went up. The only recourse then was to file in bankruptcy. Of course, the claims were filed, the charges made to the credit cards within the, what is it, twenty day period?

MS. RAWOOT: That's correct, Your Honor.

THE COURT: In looking at the testimony in the transcript, it is clear that Mr. Rawoot did say at one point, we were living off our credit cards, referring to the period [24] from about the end of '90 until May of 1991. Now, he also said that he was employed by the business, but that on occasion he couldn't be paid by the business. Well, surely, it was in Mr. Rawoot's hands as an employee and as an employer to have brought forward to the bankruptcy court proof of what salary he had been paid. The absence of that proof is, to this court, somewhat significant because surely it was in his hands to present that evidence, which would have been objective evidence and far more bearing a greater element of proof than subjective belief about reorganizing under Chapter 11.

His hope for further earnings through other employment has to be weighed against the fact that he testified that he had been seeking that other employment since October of 1990 and in May of 1991 had not obtained it. It assuredly weakens any argument on that part of Mr. Rawoot that his obtaining of other employment was of such practical and immediate nature as to give rise to some view that his sincere hope might come to pass.

The court has reviewed the matter as carefully as it could and in keeping with the remarks which the court has made from the bench, the court finds no clearly erroneous action on the part of the court below and, therefore, affirms its judgment in favor of Signet Bank and of Citibank.

Is there anything further we can do in the case,

[Filed Oct. 8, 1992]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN RE ABBAS A. RAWOOT, TERESA RAWOOT,
Debtor

Civil Action No. 92-0036-H

JUDGE JAMES H. MICHAEL, JR.

CITIBANK (SOUTH DAKOTA), N.A.
Plaintiff/Appellee

v.

ABBAS A. RAWOOT
Defendant/Appellant

ORDER

For the reasons stated in open court, it is this day

ADJUDGED AND ORDERED

that:

1. The Bankruptcy Judge's Order of February 6, 1992, holding that the cash advance of $2,250.00 made by appellee to appellant was non-dischargeable under 11 U.S.C. § 523(a)(2)(C) shall be, and it hereby is, affirmed.

2. This appeal is dismissed and hereby stricken from the docket of this court.

The clerk is hereby directed to send a certified copy of this Order to all counsel of record and to Bankruptcy Judge Krumm.

ENTERED: /s/ James H. Michael, Jr.
Judge

October 8, 1992
Date

[Filed Oct. 8, 1992]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN RE ABBAS A. RAWOOT, TERESA K. RAWOOT,
Debtor

Civil Action No. 92-0035-H

JUDGE JAMES H. MICHAEL, JR.

SIGNET BANK/VIRGINIA,
Plaintiff/Appellee

v.

ABBAS A. RAWOOT,
Defendant/Appellant

ORDER

For the reasons stated in open court, it is this day

ADJUDGED AND ORDERED

that:

1. The Bankruptcy Judge's Order of February 6, 1992, holding that the cash advance of $1,200.00 made by appellee to appellant was non-dischargeable under 11 U.S.C. § 523(a)(2)(C) shall be, and it hereby is, affirmed.

2. This appeal is dismissed and hereby stricken from the docket of this court.

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN RE: ABBAS A. RAWOOT, TERESA RAWOOT,
Rt. 1, Box 380
Timberville, VA 22853

Case No. 5-91-00434-RWK

Adversary Proceeding No. 9100044

SIGNET BANK/VIRGINIA
P. O. Box 26094
Richmond, Va. 23260-6094,
Plaintiff

vs.

ABBAS A. RAWOOT, TERESA RAWOOT,
Defendants

ORDER

Came the parties to the above captioned Adversary Proceeding, pursuant to a previously set hearing held on this 6th day of December 1991 in the United States Bankruptcy Court for the Western District of Virginia, sitting in Harrisonburg; and, upon both of the Debtors being present, with counsel, and counsel for the Creditor and upon evidence presented, the Court finds as follows:

1. That on or about the 3rd day of May, 1991, within 40 days of filing bankruptcy, the debtor, Abbas A. Rawoot, made certain clothing purchases at Marshalls Department Store in Vienna, Virginia totaling $504.67,

but the court finds that these purchases were made for ordinary family use and for maintenance of the family;

2. That the charge dated May 7, 1991, from Edinburg Mill Restaurant, Edinburg, Virginia, in the amount of $1,200.00 was actually a cash advance taken by Abbas Rawoot, and said cash advance was taken within 20 days of the filing of the Debtors bankruptcy petition;

3. The court finds the indebtedness owed Signet Bank by the Debtor. Abbas Rawoot, is non-dischargeable pursuant to provisions of Chapter 11 U.S.C. Section 523, (a), (2), (C) only to the extent of the $1,200.00 cash advances from Edinburg Mill Restaurant; and,

Accordingly, the Court Grants Judgment in favor of Signet Bank v. the Debtor Abbas Rawoot to the extent of $1,200.00 with interest from the date of entry of this Order; and that said indebtedness owed to Signet Bank is non-dischargeable pursuant to the provisions of Chapter 11 U.S.C. Section 523 (a), (2), (C); and

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN RE: ABBAS A. RAWOOT, TERESA RAWOOT,
Rt. 1, Box 380
Timberville, VA 22853

Case No. 5-91-00434-RWK

Adversary Proceeding No. 9100045

CITIBANK (SOUTH DAKOTA), N.A.
P. O. Box 5939
SAN MATEO, CA 94402,
Plaintiff

vs.

ABBAS A. RAWOOT, TERESA RAWOOT,
Defendants

ORDER

Came the parties to the above captioned Adversary Proceeding, pursuant to a hearing held on this 6th day of December 1991 in the United States Bankruptcy Court for the Western District of Virginia, sitting in Harrisonburg; and, upon both of the Debtors being present, with counsel, and counsel for the Debtor and upon evidence dually heard, the court finds as follows:

1. That on or about the 1st day of May, 1991, the Debtor, Abbas Rawoot, did obtain a cash advance from Jefferson National Bank on his Citibank Preferred Visa card in the amount of $2,250.00;

2. That this transaction took place within 20 days of the filing of the Debtors bankruptcy petition;

3. That the Debtor, Abbas A. Rawoot has not overcome the presumption as to non-dischargability as set forth in 11 U.S.C. Section 523 (a), (2), (C)

Accordingly, the Court Grants Judgment in favor of Citibank v. the Debtor, Abbas Rawoot to the extent of $2,250.00 with interest from the date of entry of this Order; and the said indebtedness owed to Citibank is non-dischargable pursuant to the provisions of Chapter 11 U.S.C. Section 523 (a), (2), (C); and,

It is further ordered that this judgment shall only apply to the Debtor, Abbas A. Rawoot, as there was no finding that Teresa Rawoot had participated in said cash advance and that the complaint of non-dischargability as to her is dismissed; and,

The clerk shall certify copies of the Order to counsel of record for the Debtor and Creditor.

Entered: /s/ Ron W. Truman

Date: February 6, 1992

JOINTLY SUBMITTED
AND AGREED TO BY:

/s/ William D. Heatwole, Esquire
WILLIAM D. HEATWOLE, ESQUIRE
Counsel for Creditor

/s/ Teresa Rawoot, Esquire
TERESA RAWOOT, ESQUIRE
Counsel for Debtor

/s/ Thomas Logie
THOMAS LOGIE
Co-Counsel for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

Case No. 5-91-00434

IN RE: ABBAS A. and TERESA RAWOOT

Case No. 5-91-00044A

SIGNET BANK/VIRGINIA

v.

ABBAS AND TERESA RAWOOT

Case No. 5-91-00045A

CITIBANK (SOUTH DAKOTA, N.A.)

v.

ABBAS AND TERESA RAWOOT

This is to certify that the following is a transcript of the hearing held in the above styled cases on the 6th day of December, 1991, in the courtroom of the United States Bankruptcy Court for the Western District of Virginia, at Harrisonburg, Virginia, the Honorable Ross W. Krumm presiding.

The following was recorded by the undersigned and is certified to be a true and correct transcript according to the best of my knowledge and belief.

Given under my hand this 27th day of February, 1992, at Harrisonburg, Virginia.

* * * *

DIRECT—ABBAS RAWOOT BY THOMAS LOGIE

[P. 9, L.16—10]

Q: [W]hen you weren't managing the mill, what was your usual profession?

A: I'm a CPA, I am an acountant and I held controllers positions before and after having been out of the job market for about two or three years. I was trying to go back in. Of course the times were tough. I went through a number of applications. . . but I was actively seeking since actually late October of 1990.

Q: [C]an you name some of the places that you applied to?

A: . . . I was in touch with my former employer, Marriott Corporation. I was in touch with several other hospitality industry companies in [the] Washington area. I was in touch with the head hunters. I was very actively seeking employment at that time.

[P. 11, L. 22—12]

Q: [W]hen did you decide definite—make a definite decision that you would file a Chapter 11?

A: We considered Chapter 11 since actually January of—this is 1991. Since January of 1991 simply to restructure the first trust on [the] Edinburg Mill. When I say first trust, the first trust with Dominion Bank and . . . we were negotiating . . . with [second trust holder] Paul Bynum . . . . we made several offers to him and the last we made we let him know that the option was to go and file for bankruptcy. And we didn't hear anything. And until then we had absolutely no plans to actually go through bankruptcy per se. It was strictly for reorganization. Frankly back in March I went out and pulled out my IRA funds and I was fully confident that Mr. Byum after he hears we're filing for Chapter 11 he would sit down and work out and we would bring some other investors with us and move forward. Unfortunately that did not happen.

[P. 12, L. 20—13]

Q: [Y]ou say you pulled [your IRA funds] out in March of 1991?

A: Yes.

Q: And what did you do with them then?

A: I used it in business and personal.

Q: For things like payroll and maintenance?

A: Yes, payroll. In winter right around February and March business was so bad that people had to be paid and those were the options. Frankly I felt at the time comfortable doing that simply because I did think Mr. Bynum was going to work out the loan and the payment and I was confident that—actually the Dominion and SBA had indicated to us that they would go and extend the time and . . . . I had hoped that the economy was going to recover. We were just about through the end of March. Business comes out, picks up. It did pick up the previous two years in Spring on and that was the season.

[P. 15, L. 16—16]

Q: Did you actually save the credit receipts?

A: Unfortunately I didn't. . . . we had absolutely no intention of going through and filing bankruptcy. That was the last thing that we wanted to do. We used the credit cards for fifteen or twenty years. There was absolutely no intent to go. And when we did file, it was not a Chapter 7 to go through and liquidate but to reorganize the debts. And we still had hope at that point. I recall when we went through the creditors meeting . . . it came out that we felt the busines was going to make it and . . . we were confident that it will make it and we will go through the reorganization. And unfortunately, things didn't turn out that way.

CROSS—A. RAWOOT BY WILLIAM HEATWOLE

[P. 19, L. 22-21]

Q: Now, you were involved in litigation with Mr. Bynum who basically sold you the mill, is that correct?

* * * *

A: [W]e sued him for fraud.

Q: [A]s set forth in your letter of April 18th, 1991 from your lawyer [Brian Roche] to I guess counsel for the other side that . . . for the first part of that year, and I direct your attention to the last paragraph on the first page, you all were barely able to break even, is that correct?

A: That's correct. . . .

* * * *

Q: And you say that you had been talking about filing a Chapter 11 since January with your counsel.

* * * *

A: I'm not sure we actually shared that with counsel.

Q: It was something you all were considering.

A: We all considered that.

Q: And when did you first see Mr. Logie?

A: I don't remember the exact date, but it was in May just days before actually—very close to filing. * * * [It was] a last minute decision.

Q: But you had had Fairfax counsel just prior to this?

A: The Fairfax counsel we did not discuss the bankruptcy at all.

[P. 22, L. 16]

Q: So at this time unless you were able to reorganize or settle this case you knew you were looking at bankruptcy?

A: We were confident at that point that we were going to reorganize, that Mr. Bynum was going to sit

down because it wasn't—you know it did not make sense for Mr. Bynum—fo us to go through this. . . . And he told me that he was going to.

[P. 23, L. 11]

Q: And at this time were you trying to draw a salary from Edinburg Mill or was it just whatever was left over?

A: Whatever was really, you know, the cash flow allowed. . .

Q: And you hadn't used this Signet Card for about a year, is that correct?

A: You know, I did not keep track of it. . . I had a Signet card . . . since 1970. It was not Signet, it was Bank of Virginia [Signet's predecessor] back then, and I used it when I needed it so . . . you may be right, I . . . did not keep track of when I used it last.

RE-CROSS BY MR. HEATWOLE

[P. 27, L. 17]

Q: Did Signet Bank owe you any money when you took this $1200?

A: Signet Bank did not owe me money. Signet Bank had extended me credit and I had that card for twenty years almost. And I used it when I needed it and I did not think anything different when I used the Signet card this time.

CLOSING ARGUMENT BY MR. LOGIE

[P. 33, L. 2]

[F]irst of all, it should be borne in mind that this was a Chapter 11, not a Chapter 7 case in the beginning. I believe that that in itself weakens the inference. Granted the statute may read the same, but Chapter 11 particularly with the expense you have to go to, the evidence is an intention to prepare a plan to repay.

[P. 38]

Certainly if he had gotten employment soon, which was certainly with several active applications in the file, he could have done so. If the Bynum suit had settled he probably could have done so. If the mill had done better he could have done so. And none of these things were so out of the realm of probability . . . The mill did not. His actual employment was delayed until September. And Mr. Bynum did not settle. But that's Monday morning quarterbacking. At the time that he took the cash advances he had a reasonable expectation of repaying them. . . . I think the evidence is clear that he had the subjective intent to repay.

CLOSING ARGUMENT BY MR. HEATWOLE

[P. 39, L. 20-40]

* * * *

Your Honor, the whole reason this subchapter (C) was created was to get us out of this subjective area. Everybody could go out and do this ten days, five days, twenty days fefore filing bankruptcy and say I intended to repay, I thought I was going to win the lottery, I thought my business was going to turn around. Everything that he thought might have happened never did take place. He didn't find employment until September, the mill never turned around, nothing happened. It was nothing but a pipe dream at the time. He should have known better. These are educated people, Your Honor. These aren't people that didn't understand what they were doing. So I would say that they have not rebutted the presumption . . . .

THE COURT

[P. 41, L.16—P. 43, L.13]

* * * *

* * * The defendant then has offered some evidence to try to rebut that presumption. And basically what I find

from the situation is the situation where you had a deteriorating financial situation with Mr. Rawoot's business which was the Edinburg Mill Restaurant and he freely admits that he was struggling to pay the bills for the restaurant, that he was an employee of the restaurant, that he was not able to take a salary from the restaurant. That he was applying all of the restaurant proceeds to try to pay the help and keep the business going. He had no salary. He had at the time he took these cash advances no wherewithal whatsoever to pay the credit card charges that he incurred by way of cash advances. There's no evidence that there were any payments made on these credit card accounts after these charges were made. He has testified that he had hoped that he was going to be able to resurrect his financially troubled business. That hope sprung from his subjective analysis of the financial transaction between his business and the former owner of the business in which he testified it made no economic sense for this former owner of the business not to come to the settlement table and resolve the matter so that the business could be preserved. But that was simply his subjective analysis, his hope. It never came to pass. He was unemployed, no ability to repay at the time he made these charges. I think that that is significant. I don't think the fact that he hoped that these things were going to happen is a sufficient showing to rebut the presumption that the plaintiff is entitled to in this case. There's just no basis for feeling or finding, you know, an intent to repay based upon subjective hope. I just don't think that's sufficient to rebut the presumption. Now, this is a credit card case and there are numerous cases which try to focus on what constitutes the intent to defraud. Some cases, for example, say if a buyer charges goods knowing that he is unable to make the contractual payment or has no intention to pay for them he obtains the property through false pretenses and false representation. I think in this case Mr. Rawoot knew at the time that he was unable to make the contractual payments. He testified that they were

living on credit cards. He didn't testify that he had any wherewithal to make those contractual payments as they came due. He hoped he would. I don't doubt the sincerity of his hope. But I just don't feel that that is sufficient to rebut the presumption which is created in favor of the plaintiff in this case. So I find that the presumption has not been rebutted by the testimony and evidence offered by the defendant in this case. I think with respect to the cash advances made by Mr. Rawoot within the twenty days of the filing of petition for relief, that the plaintiff would prevail.

* * * *

SIGNET BANK

MASTERCARD STATEMENT

5291071238217499 366212 15000

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

MAKE CHECKS PAYABLE TO SIGNET BANK

ABBAS RAWOOT
RT 1 BOX 380
TIMBERVILLE VA 22853-9411

901238217499

PLEASE COMPLETE IF YOUR ADDRESS HAS CHANGED.

YOUR NEW BALANCE IS	YOUR MINIMUM PAYMENT IS	YOUR PAYMENT IS DUE BY	FILL IN PAYMENT AMOUNT
3,662.12	150.00	06/23/91	

09

TO AVOID ADDITIONAL FINANCE CHARGES BEING APPLIED TO YOUR CURRENT PURCHASES ON NEXT MONTH'S STATEMENT, PAY THE NEW BALANCE ON THIS STATEMENT IN FULL BY THE DUE DATE.

ACCOUNT NUMBER 529107-1238217499

STATEMENT CLOSING DATE 05/28/91

TRANSACTION DATE	REFERENCE NUMBER	TRANSACTION DESCRIPTION			AMOUNT
05/03	70485301124360139020166	MARSHALLS 139	VIENNA	VA	504.67
05/06	70431781127008371052613	JAMESWAY 115	TIMBERVILLE	VA	66.49
05/07	80413351127000898273246	EDINBURG MILL REST	EDINBURG	VA	1,200.00

Total

PREVIOUS BALANCE	CASH ADVANCES	PURCHASES AND OTHER CHARGES	FINANCE CHARGE	CREDITS	PAYMENTS
1,838.05		1,771.16	52.91		

CASH ADVANCE FEE FINANCE CHARGE	AVAILABLE CREDIT	ANNUAL PERCENTAGE RATE APPLIED THIS PERIOD	YOUR MINIMUM PAYMENT IS	ACCOUNT LIMIT	TOTAL NEW BALANCE
	.00	19.80%	150.00	4,200	3,662.12

CASH ADVANCES FINANCE CHARGE BASED ON PERIODIC RATE	PERIODIC RATE	CORRESPONDING ANNUAL PERCENTAGE RATE	BALANCE RATE APPLIED TO	PREVIOUS BALANCE	CASH ADVANCE NEW BALANCE
	1.65%	19.80%	.00	.00	.00

PURCHASES AND OTHER CHARGES FINANCE CHARGE BASED ON PERIODIC RATE	PERIODIC RATE	CORRESPONDING ANNUAL PERCENTAGE RATE	BALANCE RATE APPLIED TO	PREVIOUS BALANCE	PURCHASES AND OTHER CHARGES NEW BALANCE
52.91	1.65%	19.80%	3,206.40	1,838.05	3,662.12

MASTERCARD STATEMENT

124705

NOTICE: See Reverse Side For Important Disclosure Information

* * 8 03 * *

PSC F90-5371

BEST AVAILABLE COPY

24a

Exhibit 1

06/18/91 | | 3224.00

07/16/91 03:02:55

SD 00 A1 2 0888 PV 0270 PV

ABBAS RAWOOT
RT 1 BOX 380
TIMBERVILLE VA
22853-9411

CITIBANK PREFERRED
P.O. BOX 6001
THE LAKES, NV
88901-6001

( ) New Home Phone
( ) New Business Phone
Please give change of address or phone number above

To avoid additional FINANCE CHARGE being applied to your current purchases on next month's statement, pay the entire new balance in full by the due date

For Customer Service call or write

800-645-9565
BOX 6062
SIOUX FALLS, SD
57117

For billing inquiries write to this address. Calling will not preserve your rights

itibank Preferred Visa

Account Number
271 3827 0032 5828

Statement Date	Total Credit Line	Cash Advance Limit	New Balance	Available Credit Line	Available Cash Line
05/24/91	$5000	$3000	$4864.99	SEE BELOW	SEE BELOW

Sale Date	Post Date	Reference Number	Activity Since Last Statement			Amount	T/C	Bus # or Mer #	Ref #
0502	0502	TGHPOM90	CITGO 7-ELEVLN 18245	NEW MARKET	VA	2100	61	US	U74299101123
0503	0503	9D71FWP1	C MART 0889	WOODSTOCK	VA	1300	61	US	U74261001125
0501	0501	QCPBNK83	JEFF NATL HARRISONBURG	HARRISONBURG	VA	225000	60	US	74368001123
	0524		ADVANCES*FINANCE CHARGE*FOR TRANSACTIONS			1000			
	0524		ADVANCES*FINANCE CHARGE*PERIODIC RATE			2806			

CitiDollar$ Earned Used Adjusted Citi$ Total
832 + 7 - 0 + 0 = 839

Your account is past due. Please pay the minimum amount due before using your card again. If you have already sent us this payment, thank you.

Account Summary

	Previous Balance	(+) Purchases & Advances	(-) Payments	(-) Credits	(+) Finance Charge	(+) Late Charges	(=) New Balance	Amount Due	6620
Purchases	250748	3400			3545		257693	Purchase Minimum Due	6880
Advances		225000			3806		228806	Amount Over Credit Line Fee	8900
Total	250748	228400			7351		486499	Past Due	22400
								Minimum Amount Due	

Rate Summary	PURCHASES	ADVANCES
Number of days this billing period: 30		
Balance subject to finance charge	2531.98	1725.00
Periodic Rate	1.40000%	.05424%
Nominal Annual Percentage Rate	16.80%	19.80%
Annual Percentage Rate	16.80%	20.30%

Make check or money order payable in U.S. dollars on a U.S. bank to Citibank. Include account number on check or money order. No cash ple

CCS004

Exhibit 1

BEST AVAILABLE COPY